

19-6-318 Remedial action liability -- Liability agreements.

- (1)
- (a) In apportioning responsibility for the remedial action in any administrative proceeding or judicial action under Sections 19-6-317 and 19-6-319, the following standards apply:
 - (i) liability shall be apportioned in proportion to each responsible party's respective contribution to the release;
 - (ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of hazardous substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.
 - (b) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility before March 18, 1985, who may otherwise be a responsible party but who did not know that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.
 - (c) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility on or after March 18, 1985, who may otherwise be a responsible party but who did not know and had no reason to know, after having taken all appropriate inquiry into the previous ownership and uses of the facility, consistent with good commercial or customary practice at the time of the purchase, that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.
 - (d) A responsible party who is not exempt under Subsection (1)(b) or (c) may be considered to have contributed to the release and may be liable for a proportionate share of costs as provided under this section either by affirmatively causing a release or by failing to take action to prevent or abate a release which has originated at or from the facility. A person whose property is contaminated by migration from an offsite release is not considered to have contributed to the release unless the person takes actions which exacerbate the release.
 - (e) A responsible party who meets the criteria in Subsection (1)(b) or (c) or a person who is not considered to have contributed to a release under Subsection (1)(d) is not considered to have contributed to a release solely by failing to take abatement or remedial action pursuant to an administrative order.
 - (f)
 - (i) The burden of proving proportionate contribution shall be borne by each responsible party.
 - (ii) If a responsible party does not prove his proportionate contribution, the court or the director shall apportion liability to the party solely based on available evidence and the standards of Subsection (1)(a).
 - (iii) The ability of a responsible party to pay is not a factor in the apportionment of liability.
 - (g) The court may not impose joint and several liability.
 - (h) Each responsible party is strictly liable solely for his proportionate share of remedial action costs.
- (2) The failure of the executive director to name all responsible parties is not a defense to an action under this section.
- (3)
- (a) Any party who incurs costs under Sections 19-6-317 through 19-6-320 in excess of his liability may seek contribution from any other party who is or may be liable under Sections 19-6-317 through 19-6-320 for the excess costs in district court.

- (b) In resolving claims made under Subsection (3)(a), the court shall allocate costs using the standards set forth in Subsection (1).
- (4)
- (a) A party who has resolved his liability in an agreement under Sections 19-6-317 through 19-6-320 is not liable for claims for contribution regarding matters addressed in the settlement.
 - (b)
 - (i) An agreement does not discharge any of the liability of responsible parties who are not parties to the agreement, unless the terms of the agreement provide otherwise.
 - (ii) An agreement made under this Subsection (4)(b) reduces the potential liability of other responsible parties by the amount of the agreement.
- (5)
- (a) If the executive director obtains less than complete relief from a party who has resolved his liability in an agreement under Sections 19-6-317 through 19-6-320, the executive director may bring an action against any party who has not resolved his liability in an agreement.
 - (b) In apportioning liability, the standards of Subsection (1) apply.
 - (c) A party who resolved his liability for some or all of the costs in an agreement under Sections 19-6-317 through 19-6-320 may seek contribution from any person who is not party to an agreement under Sections 19-6-317 through 19-6-320.
- (6)
- (a) An agreement made under Sections 19-6-317 through 19-6-320 may provide that the executive director will pay for costs of actions that the parties have agreed to perform, but which the executive director has agreed to finance, under the agreement.
 - (b) If the executive director makes payments, he may recover the amount using the authority of Sections 19-6-317 through 19-6-320 or any other applicable authority.

Amended by Chapter 324, 2010 General Session